UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,113	01/07/2004	Francisco J. Napolez	2973-A-34	5216

7590 06/01/2006

Cahill, von Hellens & Glazer P.L.C.
2141 East Highland Avenue, 155 Park One
Phoenix, AZ 85016

EXAMINER	
HAYES, BRET C	

ART UNIT	PAPER NUMBER
3641	

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/753,113
Filing Date: January 07, 2004
Appellant(s): NAPOLEZ ET AL.

Wm. C. Cahill
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the Order Returning Undocketed Appeal to the examiner filed 26 APR 06.

Examiner has contacted and received from William Cahill the missing appendices – see attached Supplemental Appeal brief.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,263,836	Hollis	7-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 3 – 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,263,836 B1 to Hollis.

2. Re – claims 3 and 8, Hollis discloses the claimed invention including: a) a housing **10**; b) first and second electrodes **13**—whether the electrodes are disclosed as being in contact with the dog's skin or not is irrelevant, as any protrusion extending toward the dog's neck would work its way down among the fur to the dog's neck, at least over time; a vibration sensor* – while Hollis does not explicitly state a vibration sensor, since vocalizations (sounds) inherently vibrate the surrounding medium (air, in this case), it would be inherent to use a vibration sensor; d) control circuitry **32**; e) a motion detector **50**; and, f) the circuitry coupled to receive the motion detection signal and operative to produce the aversive stimulus signal.

3. Re – claims 4 and 9, Hollis further discloses a reset function, see Fig. 6, for example.

4. Re – claim 5, Hollis further discloses a battery monitor, set forth at col. 4, line 1, and an LED **15** as claimed.

5. Re – method claims 6 and 7, in view of the structure disclosed by Hollis, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

6. Alternatively, claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Hollis. Hollis discloses the claimed invention except for explicitly stating the claimed circuit connectors *per se*; for example, high impedance, driver, resistors, transistors, etc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement these various connectors, since these are well known in the electronics art and since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

(10) Response to Argument

In response to Applicants' argument that the examiner's position regarding the electrodes being contact with the dog's skin is in error, examiner will attempt to clarify. Perhaps, the term 'irrelevant' was misinterpreted. Examiner did not mean that the electrodes being in contact with the dog's skin to be irrelevant. Rather, the examiner asserted that "whether the electrodes are ***disclosed*** as being in contact with the dog's skin or ***is irrelevant***," which, as it turns out, is moot because such is disclosed, as at col. 3, line 58, which states, "Stimulation electrodes **13** provide electrical paths to dog's **12** skin." It cannot be any plainer that Hollis thus anticipates the claimed limitation of electrodes being in contact with the dog's skin via electrical paths.

In response to the Applicants' argument that the examiner errs in understanding the vibration sensor, examiner disagrees. As set forth in previous responses to arguments, in response to the argument that Applicants' vibration sensor is insensitive to air-borne pressure variations, examiner argues against two ways.

First, while that may be true and may further aid in patentably distinguishing the claimed invention from the prior art of record, ***such is not claimed***. And a microphone, as disclosed by Hollis is, reasserted here by examiner, a vibration sensor. For clarity, examiner will attempt to elucidate. According to Wikipidea.org, "In all microphones, sound waves (sound pressure) are translated into mechanical vibrations in a thin, flexible diaphragm. These sound vibrations are then converted by various methods into an electrical signal which varies in voltage amplitude and frequency in an analog of the original sound. For this reason, a microphone is an acoustic wave to voltage modulation transducer." Any microphone sensing these sound waves, then, is a vibration sensor ***as claimed***.

Second, if a dog were barking loudly and closely enough to a dog wearing the claimed invention, it is questionable whether the device would not 'sense' sympathetic vibrations occurring in the dog wearing the device—in much the same way that eardrums sense sound by sympathetic vibration, a dog's anatomy, say its throat, can be caused to vibrate, given enough vibratory stimulus. It is not clear how the claimed sensor would distinguish from such.

Regardless of the above, the simple fact of the matter is that a microphone as disclosed by Hollis is a vibration sensor ***as claimed***. Whether Applicants' sensor is insensitive to air-borne vibration or not is moot, because such is not claimed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Bret Hayes

Conferees:

Michael Carone

Son Nguyen STN

Bret Hayes

MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER